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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

GENERAL GOVERNMENT

AND CONSTITUTIONAL AMENDMENT COMMITTEE PROPOSAL

ON SUFFRAGE AND ELECTIONS

Date Reported: February 12, 1972

Mark Etchart, Chairman

Vice Chairman

MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

Date: February 12, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: General Government and Constitutional Amendment Committee

Ladies and Gentlemen:

The General Government and Constitutional Amendment Committee submits herewith a proposed Suffrage and Elections Article. The proposed Article is intended to replace all sections of the present constitution dealing with suffrage and elections.

The Committee addressed itself to the fundamental problems concerning suffrage and elections. The Committee worked with the basic purpose of making the electoral process as effective and meaningful as possible for the individual Montanan. In doing so the Committee gave careful consideration to several citizen and delegate proposals. Our end product is composed of a majority and a minority report. In signing either report, a Committee member does not necessarily endorse each and every statement in it.

The Committee utilized the services of the following people: James Grady (Research Analyst), Bobbie Murphy (Secretary) and Robert Skaggs (Intern).

Mark Etchart

Mark Etchart, Chairman

Paul K. Harlow, Vice Chairman

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BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Suffrage and Elections to read as follows:

ARTICLE ____

SUFFRAGE AND ELECTIONS

Section 1. All elections by the people shall be by secret ballot.

Section 2. Any citizen of the United States who is 18 years of age or older, and meets the registration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote.

Section 3. The legislature shall provide by law the requirements for residency, registration, absentee voting and administration of elections.

Section 4. Any person qualified to vote at general elections and for state officers in this state is eligible to any public office except as otherwise provided in this constitution, subject to any additional qualifications provided by the legislature.

Section 5. In all elections held by the people under this constitution, the person or persons receiving the highest number of legal votes is elected.

Mark Etchart, Chairman

Paul K. Harlow, Vice Chairman

Don E. Belcher Bruce M. Brown Lyman W. Choate

Otto T. Habedank

COMMENTS ON MAJORITY PROPOSAL

Section 1. All elections by the people shall be by secret ballot.

The wording in this section differs from the present Article IX, Section 1 only in that it includes the word "secret." The Committee feels that the guarantee of secrecy in voting is important enough to warrant inclusion in the constitution.

Section 2. Any citizen of the United States who is 18 years of age or older, and meets the regisration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote.

This section embodies all of the proposed constitutional qualification for and disqualifications from voting. In the 1889 constitution, these qualifications and disqualifications are scattered through six sections of Article IX. The proposed Article constitutionally gives the legislature the major burden for establishing explicit registration and residence requirements. The rationale for individual segments of Section 2 follows:

"(a) Any citizen of the United States who is 18 years of age or older,. . ."

Eighteen is the voting age for all elections as established by the 26th Amendment to the national constitution. The 1971 Montana Legislature was among the state legislatures that ratified the amendment.

"(b) . . . and meets the registration and residence requirements of the state

and political subdivision is a qualified elector, . ."

This section is self-explanatory.

"(c) . . . except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote . . ."

The present constitution automatically disenfranchises felons (Article IX, Section 2), and extends this disenfranchisement even after the person is released from prison. The convicted felon must apply for often difficult-to-receive pardons before he may again vote. The Committee feels that this system of permanent punishment is contrary to the best interests of society, in that it does nothing to aid rehabilitation of a criminal. Indeed, a provision disenfranchising a felon attaches a stigma to the person, and hinders rehabilitation. Additionally, a disqualification provision flys in the face of the rationale for prisoner release: The presumption is that when a man comes out of prison he should be encouraged to resume normal civic relationships.

As for the provision disenfranchising those adjudicated as "unsound" in mind, the Committee feels that with the new and ever-expanding developments in mental hygiene, it is unwise to freeze arbitrary mental disqualifications by label into the constitution. Consequently, the Committee has left such decisions for judges to make on an individual case basis.

Section 3. The legislature shall provide by law the requirements for residency, registration, absentee

voting and administration of elections.

This section allows the legislature to determine the voting residency and registration requirements. In a large part this has been done by Section 23-2701, Revised Codes of Montana, 1947, which established the residency period for most elections at 30 days. This statute, enacted in 1971, conflicts with the present constitutional requirement of one year, though this section has a proposed amendment which would change the time limit to 30 days. Approximately 60% of the states include specific residency and registration requirements in their constitutions, but most of the newer state constitutions follow the example of the proposed article and leave those matters to the legislative assembly. This section will help avoid conflict with rapidly changing federal laws and court decisions.

This section also allows the legislature to determine the time that all elections are held. The Committee closely examined several delegate proposals regarding constitutionally establishing the grouping and scheduling of elections. It is the Committee's considered opinion that the legislature is capable of scheduling and providing administration for all elections. The Committee is extremely reluctant to freeze "for all time" the schedule and administration process of elections.

Section 4. Any person qualified to vote at general elections and for state officers in this state is eligible to any public office except as otherwise provided in this constitution, subject to any additional qualifications provided by the legislature.

This section enables any Montana voter to participate

as an office holder in the electoral process. It does not prohibit the legislature from establishing necessary technical qualifications for specialized jobs (say licensed attorney for the office of attorney general), but it does stop the legislature from creating arbitrary age qualifications for certain offices.

Section 5. In all elections held by the people under this constitution, the person or persons receiving the highest number of legal votes is elected.

This section is identical to Article IX, Section 13 of the present constitution, and merely guarantees the tradition of majority rule. The Committee feels its retention is necessary as both a statement of principle and a practical directive.

* * *

As can be seen in Appendix A, the proposed Suffrage and Elections Article deletes several provisions contained in the present Constitution, Article IX. These sections, 3, 4, 5, 6, 7, 10, and 12, have either been superseded by judicial review or federal action or do not have enough redeeming value to be left in the constitution. Discussion by section of those sections of the present constitution follows:

"Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or

of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison."

Section 3 does not limit anyone from establishing residency in Montana, if the person is otherwise eligible, if that person can show an honest intent to do so. This section is ineffectual, and covered in the proposed Section 3.

"Sec. 4. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom."

Section 4 given all its exceptions, is of little value and can be implemented just as effectively by legislation. There is no comparable section in the proposed article.

"Sec. 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger."

Section 5 serves no real function, and is probably not enforceable. Consequently, there is no comparable section in the proposed article.

"Sec. 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same."

Section 6 suffers from the same limitations as section 3 and is redundant with that section. It too

has no comparable section in the proposed article, though its basic intent is covered in proposed Section 3.

> "Sec. 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment."

> "Sec. 10. All persons possessing the qualifications for suffrage prescribed by Section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office."

Sections 7 and 10 are of parallel intent with Section 11 of the present constitution, and as such are revised by Section 4 of the proposed article.

> "Sec. 12. Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote."

Section 12 is nationally unconstitutional on two counts: property qualification for voting and implied disenfran-

chisement on a sexual basis. There is no comparable section in the proposed article.

All of the other sections of Article IX of the present constitution have been incorporated or revised in the proposed article.

MINORITY PROPOSAL

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on the Legislature to read as follows:

ARTICLE____

Section 1. All elections by the people shall be by secret ballot.

Section 2. Any citizen of the United States who is eighteen (18) years of age or older, and meets the registration and residence requirements of the state and political subdivision is a qualified elector, except that no person who is serving a sentence for a felony in a penal institution or who is judged of unsound mind by a Court may vote.

Section 3. The legislature shall provide by law the requirements for residency, absentee voting and administration of elections. Voter registration prior to election day shall not be a condition for voting. The legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against abuses of the electoral process.

Section 4. Any person qualified to vote at general elections and for state officers in this state, is eligible to any public office except as otherwise provided in this constitution, subject to any additional qualifications provided by the legislature.

Section 5. In all elections held by the people under this constitution, the person or persons receiving the highest number of legal votes is elected.

Robert Vermillion

Peter "Pete" Lorello

COMMENTS ON MINORITY PROPOSAL

The minority proposal differs from the majority proposal only in its wording of Section 3. The minority wording is as follows:

Section 3. The legislature shall provide by law the requirements for residence, absentee voting and administration of elections. Voter registration prior to election day shall not be a condition for voting. The legislature shall provide for a system of poll booth registration, insure the purity of elections and guard against abuses of the electoral process.

COMMENTS

The main purpose of the minority proposal on Suffrage and Elections is centered on the word "registration" in Section 3. The change in the wording is aimed primarily at eliminating antiquated requirements which unnecessarily burden the potential voter. The primary purpose for registration laws is to prevent fraud, yet North Dakota has had poll booth registration for twenty-one (21) years. Poll booth registration provides that the voter may register at the time and place of voting. As Professor Lloyd Omdahl stated in his study of the effect of poll booth registration in North Dakota that since 1951 not one voting inspector in the state has ever requested legal action against a supposedly unqualified elector.

The thrust of the minority proposal is that the requirement to vote is a basic right which should not be abridged without very strong reasons. Therefore, the burden of proof for showing the necessity of registration rests with those who would maintain registration laws. They must show first that there is a great threat of voter fraud in the state of Montana and secondly, that laws governing poll booth registration would not deter abuses of the franchise. It is not the minority proposal

which must show a need for registration because of possible voter fraud, but rather the supporters of registration who must show that there will be voter fraud. The voters of Montana must be assumed innocent until proven guilty.

The question arises: Should the Constitution leave matters regarding registration to the Legislature? Since the right to vote is basic and it has been thwarted through outdated registration procedures, the Legislature has denied the right to vote and therefore, it must be set forth in the Constitution.

The minority proposal specifically directs the Legislature to pass laws to keep the election process free of fraud. Poll booth registration has been proven effective in North Dakota, the likelihood of fraud is minimal and such a system must be adopted in Montana.

APPENDIX A

CROSS REFERENCES

Proposed Section	Proposed Article and Section
1	IX, 1 (slightly revised)
2	IX, 2 (revised)
3	IX, 9 (revised)
4	IX, 7 (revised) and IX, 11 (revised
5	IX, 13
Not replaced	IX, 3
Not replaced	IX, 4
Not replaced	IX, 5
Not replaced	IX, 6
Not replaced	IX, 10
Not replaced	IX, 12

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the committee during its deliberations:

	Number of proposal	Chief Sponsor	Subject Matter and Disposition
1.	29	Erdmann	This proposal would hold school elections in conjunction with other elections. The Committee feels this matter should be decided by the legislature, and provided for such consideration under Section 3 of the proposed Article.
2.	47	Cain	This proposal would establish three types of elections. The Committee feels this matter should be decided by the legislature, and provided for such consideration under Section 3 of the proposed Article.
3.	82	Brown	The substance of this proposal comprises the Committee report.
4.	95	Erdmann	This proposal constitutionally provided for auxiliary canvassing boards. The Committee feels this is a legislative decision, and allows the legislature to do so in Sec. 3 of the proposed article.
5.	131	Bugbee	This proposal provides for a system of poll booth registration, essentially eliminating registration for voting. The Committee carefully considered such a measure, but feels that the legislature should make such a determination, as administration of elections can best be handled by the legislature. The Committee allows the legislature to do so in Section 3 of the proposed article.
6.	147	Cate	This proposal provides for a presidential primary system in Montana. The Committee feels the history of such systems in Montana shows that such systems should not be constitutionally created. However, under the proposed Article, the legislature could provide for such a system.
7.	178	McKeon	The basic difference between this proposal and the proposed Article is a system similar to the one in Delegate Proposal 131, and was not adopted for the same reasons.

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Robert Watt - Montana Student Presidents' Association - Helena - Registration and residency requirements.

2. Steven F. Coldiron - Montana State Low Income Organization - Helena - Suffrage and felony disqualification.

3. J. J. Schmidt - County Clerk and Recorders Association - Great Falls - Vote counting.

4. Kenneth A. Rohyans - Montana Association for Retarded Children and Adults, Inc. - Helena - Suffrage and mental incompetency.

5. Ernie Post - Montana State AFL-CIO - Helena - No registration requirement.

Note: This list does not contain delegates who spoke on their proposals

Roll Call Vote _____ Committee

	Date:Feb 9.*	
Mark Etchart	Yes	
Paul K. Harlow	Yes	
Bruce Brown	Yes	
Don Belcher	Yes	
Lyman Choate	Yes	
Otto Habedank	Yes	
Pete Lorello	No	
Robert Vermillion	No	

*This is the vote on the majority proposal.